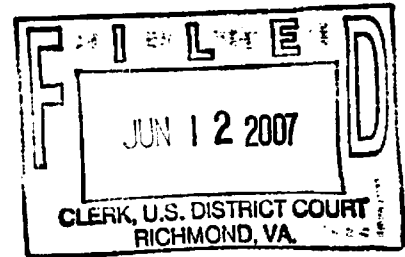


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11 UNITED STATES DISTRICT COURT
12 EASTERN DISTRICT OF VIRGINIA
13 RICHMOND DIVISION
14

15
16 SEGONE, Inc.,

17 Plaintiff,

18 v.

19 FOX BROADCASTING COMPANY,

20 Defendant.
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Case No. 3:07CV342

**COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE
RELIEF**

1 Plaintiff segOne, Inc. ("segOne"), by and through its attorneys, brings this action and alleges
2 against Defendant Fox Broadcasting Company ("Fox") as follows:

3 **STATEMENT OF JURISDICTION**

4 1. This is a civil action seeking declaratory relief arising out of a dispute and controversy
5 between Plaintiff and Defendant relating to the Copyright Act, 17 U.S.C. § 101 *et seq.* This Court has
6 jurisdiction of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a), which give the U.S. District
7 Courts jurisdiction, respectively, in any civil action arising under the laws of the United States, and any
8 civil action arising under an Act of Congress relating to patents, copyrights and trademarks. This Court
9 also has jurisdiction under the Declaratory Judgment Act, 28 U.S.C. § 2201.

10 2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b)(1) and 1391(c).

11 **THE DEVICE AT ISSUE**

12 3. Plaintiff segOne manufactures and distributes an electronic device (the "segOne Device")
13 that attaches to a television and to a wire carrying a television signal (which may be delivered via an
14 over-the-air broadcast, or via a cable or satellite television provider) and detects when the television
15 signal stops transmitting a television program and begins transmitting an advertisement.

16 4. Upon detecting such a transition, the segOne Device causes the attached television to
17 switch to another input for a period of up to two minutes. During that period, the segOne Device causes
18 different material, stored within the segOne Device, to display over that input on the attached television.
19 At the end of the period, the segOne Device causes the attached television to switch back to the input
20 carrying the cable, satellite or over-the-air programming.

21 5. Thus, instead of seeing the commercials playing on the cable, satellite, or over-the-air feed
22 during those two minutes, viewers see advertising material or other alternative content supplied either by
23 segOne or by the particular establishment that has contracted for the use of the segOne Device.

24 6. The advertising and other materials displayed to the viewers are targeted to the specific
25 interests of viewers in the particular establishment utilizing the segOne Device. The purpose and effect
26 of the segOne Device is to increase the relevance, effectiveness, and, as a consequence, the value, of
27 programming shown to persons viewing television in establishments such as bars, health clubs, car
28 dealerships, etc. In each of these settings, the presence of the viewer provides useful information about

1 that viewer's interests, and also about the type of advertising and programming likely to be of interest to
2 that viewer.

3 **PARTIES**

4 7. Plaintiff segOne, Inc. is a corporation organized and existing under the laws of the state of
5 Delaware.

6 8. Plaintiff segOne has marketed the segOne Device nationwide, including within the
7 Commonwealth of Virginia and in this judicial district. Plaintiff segOne has contracted to supply the
8 segOne Device to entities that do business in the Commonwealth of Virginia and in this judicial district,
9 including nationwide truck stop operator Flying J, Inc., and major health club operator L.A. Fitness.
10 Both Flying J and L.A. Fitness operate facilities within the Commonwealth and this judicial district.

11 9. Upon information and belief, Defendant Fox Broadcasting Company ("Fox") is a
12 corporation organized and existing under the laws of the state of Delaware.

13 10. Defendant Fox is a television production and broadcasting network. Fox produces
14 television programming and distributes that programming through a nationwide network of affiliate
15 television stations that broadcast their signals over the air, including several affiliate stations located in
16 this judicial district. In addition, Fox distributes its programming through agreements with cable
17 television distributors, such as Comcast Corporation and Cox Communications, and satellite television
18 distributors, such as EchoStar Communications. Fox distributes its programming through several cable
19 and satellite television providers that provide service to commercial and residential customers located in
20 this judicial district, including Cavalier Telephone and TV, a cable television provider headquartered in
21 Richmond, Virginia that distributes Fox programming including Fox News Channel, FX (a Fox channel
22 offering entertainment and sports programming), Fox Movie Channel, National Geographic Channel,
23 and WRLH-TV (the Richmond, Virginia Fox affiliate).

24 **THE CURRENT CONTROVERSY**

25 11. A dispute has arisen between Plaintiff segOne and Defendant Fox because Defendant has
26 asserted that use of the segOne Device infringes the copyrights on Defendant's television programming.
27 Defendant Fox acted on this belief by filing a lawsuit against a segOne customer, Flying J, Inc., in
28 federal court in New York ("the Flying J Suit").

1 12. Flying J, a nationwide operator of truck stops, installed and used the segOne Device in a
2 number of its locations, including locations within the Commonwealth of Virginia and this judicial
3 district.

4 13. In the Flying J Suit, Fox and other broadcast networks alleged that Flying J's use of the
5 segOne Device violated the federal Copyright Act, 17 U.S.C. § 101 *et seq.* Fox also alleged state unfair
6 competition claims in the lawsuit, although the state law claims were dismissed with prejudice. segOne
7 understands that the parties to the Flying J Suit have recently reached a settlement.

8 14. As a result of the Flying J Suit, Flying J has discontinued use of the segOne Device,
9 thereby depriving segOne of substantial revenues that would have arisen from segOne's contract with
10 Flying J—revenues that would have accrued, in part, as a result of Flying J's operation of the segOne
11 Device in the Commonwealth of Virginia and in this judicial district.

12 15. Use of the segOne Device does not infringe Fox's copyrights. Put simply, the segOne
13 Device is nothing more than a fancy remote control. Just as a viewer may use a television remote to
14 change from a television program to content playing on a DVD player or a digital video recorder (DVR)
15 such as TiVo, the segOne Device uses a robot to automatically switch from television programming to
16 content stored in the segOne Device.

17 16. *The segOne Device does not create a copy of Fox's programming. Nor does the segOne*
18 *Device alter, perform, display, or retransmit Fox's programming in any way.* The segOne Device
19 simply causes an attached television to display one program rather than another—an activity about
20 which Plaintiff segOne believes the copyright laws have nothing to say.

21 17. Based on the foregoing, there is an immediate, concrete dispute between segOne and Fox
22 that is ripe for resolution by this Court. Fox claims copyrights on its television programming, and has
23 asserted, along with other network plaintiffs in the Flying J litigation, that use of the segOne device
24 infringes the copyrights on these programs unless that use is authorized by Fox. Plaintiff segOne
25 believes use of the segOne Device does not require Fox's authorization. Based on the existence of this
26 clear and concrete legal dispute, on the federal copyright claim alleged in Fox's lawsuit against
27 segOne's customer Flying J, on statements made by Fox in the Flying J Suit complaint that use of the
28 segOne Device causes copyright infringement, and on segOne's information and belief that the plaintiffs

1 in the Flying J Suit (including Fox), or their agents, have threatened other actual or potential segOne
2 clients that use of the segOne Device causes copyright infringement, segOne expects that it will soon be
3 targeted for a copyright lawsuit and further is informed and believes that it has suffered and will
4 continue to suffer substantial chilling of its business opportunities based on Fox's conduct.

5 18. In light of the current dispute between segOne and Fox and segOne's reasonable fear of
6 substantial copyright liability, and because of the chilling effect of the threats of such alleged liability on
7 segOne's customer base, Plaintiff segOne has discontinued the distribution of the segOne Device in the
8 United States. Fox's copyright lawsuit has therefore caused, and was intended to cause, segOne to fear
9 copyright liability and on that basis to cease distribution of the segOne Device, and therefore to suffer
10 substantial commercial harm.

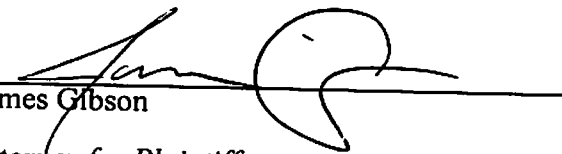
11 19. Accordingly, there is an actual, ripe controversy between the parties for this Court to
12 resolve in accordance with 28 U.S.C. § 2201 and Fed.R.Civ.P. 57.

13 20. Plaintiff segOne seeks from this Court a declaration of its rights in this dispute—in
14 particular, a declaration that use of the segOne Device, in conjunction with Fox programming, does not
15 infringe Fox's copyrights.

16 WHEREFORE, Plaintiff segOne respectfully requests that the Court enter an Order as
17 follows:

- 18 1. A judgment declaring that use of the segOne Device, in conjunction with Fox
19 programming, does not infringe Fox's copyrights under the federal Copyright Act,
20 17 U.S.C. § 101 *et seq.*
- 21 2. For an award of Plaintiff's costs and attorneys' fees incurred in this action; and
- 22 3. For such other and further relief as the Court deems just and proper.

23
24 Dated: June 12, 2007

25
26 By: 
27 James Gibson
28 Attorney for Plaintiff
SEGONE, INC.